

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 3, 2010 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 23 recites the limitation "the threads of the locking mechanism" in the twentieth and twenty-first lines of the claim. There is insufficient antecedent basis for this limitation in the claim. Examiner notes that the locking mechanism is not positively claimed as part of the implantable spinal connector. Examiner suggests positively claiming the locking mechanism and its essential features in order to clarify the claim language.

4. Claim 67 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 67 is written in the form of a method; however applicant is claiming an apparatus. Examiner suggests changing the claim language to recite: "the locking mechanism is configured to bottom load relative to the clamp member."

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 4-6, 13-15, 22-23, and 66 are rejected under 35 U.S.C. 102(b) as being anticipated by Bryan (U.S. Patent 5,947,965).

Bryan discloses an implantable spinal connector for mating a spinal fixation element to a spinal anchoring device, comprising: a clamp member (60) having top and bottom portions (61, 63) with a recess (64) formed there between, the top and bottom portions including first and second ends, the second ends being connected to one another such that the top and bottom portions are a singular piece and are movable between an open position (FIG 2B) in which the top and bottom portions are spaced a distance apart from one another, and a closed position (FIG 1) in which the clamp member (60) is adapted to engage a spinal fixation element (12) disposed within the recess (64), the top and bottom portions including inferior and superior surfaces, respectively, that extend from the recess to the first end (FIG 2B), and the clamp member further including a bore (66, 67) located between the recess and the first end and extending through the top and bottom portions for receiving a locking mechanism (50) for locking the top and bottom portions in the closed position (FIG 1), wherein the bores (66, 67) in the top and bottom portions are coaxially aligned when the top and bottom portions are in the open position and when top and bottom portions are in the closed position (FIG 2B); wherein the bore

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(67) in the bottom portion comprises a threaded bore for mating with corresponding threads formed on at least a portion of the locking mechanism, and the bore (66) in the top portion comprises an unthreaded bore such that the locking mechanism can freely rotate in the unthreaded bore prior to being received within the threaded bore to lock the top and bottom portions in the closed position (FIG 1); and wherein the top and bottom portions are biased to the open position such that a force greater than the biasing force must be applied to move the top and bottom portions to the closed position (FIG 2B).

The recess (64) is formed in each of the inferior surface of the top portion and the superior surface of the bottom portion of the clamp member (FIG 2B). Additionally, the recess (64) has a concave shape. Further, there is a locking mechanism (50) disposable through the bore and effective to lock the top and bottom portions in the closed position to retain a spinal fixation element there between (FIG 1). The locking mechanism (50) comprises a fastening element having a head (56) and a shaft (54), and wherein the unthreaded bore (66) member is adapted to freely rotatably receive the threaded shaft (54) of the fastening element, and the threaded bore (67) is adapted to mate to threads formed on at least a portion of the shaft of the fastening element (Column 9). The fastening element (50) includes a flange (56) formed there around and adapted to at least temporarily mate the fastening element to a spinal anchoring device (FIG 1); and the clamp member (60) is formed from a material that allows the clamp member to deform around a spinal fixation element disposed between the top and bottom portions when the clamp member is locked in the closed position (FIG 1). Additionally, the unthreaded bore (66) is configured to receive the locking mechanism (50) such that when the threads of

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the locking mechanism (55) are mated with threads of the threaded bore (67) to lock the top and bottom portions in the closed position, an exterior surface of the locking mechanism faces an interior surface of the unthreaded bore without an intervening element being positioned therebetween (FIG 1; Column 9).

Allowable Subject Matter

7. Claims 16-19 and 24-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments with respect to claims 1, 4-6, 13-19, 22-25, and 66-67 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELANA B. FISHER whose telephone number is (571)270-3643. The examiner can normally be reached on Monday through Friday from 8:30AM to 5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571)272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Elana B Fisher/

Examiner, Art Unit 3733

/EDUARDO C. ROBERT/

Supervisory Patent Examiner, Art Unit 3733